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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,096	06/20/2005	Jens Ole Sorensen	155-2	6421

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EXAMINER	
CASTELLANO, STEPHEN J	
ART UNIT	**PAPER NUMBER**
3781	

NOTIFICATION DATE	DELIVERY MODE
12/04/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ecallan1@san.rr.com

Office Action Summary	Application No.	Applicant(s)	
	10/540,096	SORENSEN ET AL.	
	Examiner	Art Unit	
	/Stephen J. Castellano/	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 August 2009 and 09 September 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5-7,9-12,14,15,20-22,25,26 and 28-32* is/are pending in the application.

4a) Of the above claim(s) *20-22 and 28-30* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,5-7,9-12,14,15,25,26,31 and 32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 2-4, 8, 13, 16-19, 23-24 and 27 have been canceled. Claims 1, 5-7, 9-12, 14-15, 20-22, 25-26 and 28-32 are pending.

Applicant's election of Group 1: Fig. 4 in the reply filed on January 26, 2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 20-22 and 28-30 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected specie, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 26, 2009.

Applicant's attention is directed to Fig. 1-10, Fig. 12 which shows section A-A for Fig. 1-10 and the tapered appearance of the cup in Fig. 12. The ribs extend from top to bottom. Typically with a tapered cup, the vertically extending ribs and webs will not have a constant thickness (ribs) or width (webs). Therefore, no one rib thickness is predominant over another rib thickness. Edwards (3443715) shows a typical narrowing from top to bottom of ribs and webs. This is commonly referred to as tapering. Applicant has added language referring to the "predominant thickness of the ribs." The term "predominant" is new matter. The term "predominant" never appeared in the original disclosure. Also, no drawing clues could be found that support the word "predominant."

The amendment filed August 14, 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Description of ribs as having a "predominant"

thickness in the amendment made to page 10 between lines 20-21. Also, the definition of the term "predominant" is new matter as well.

Applicant is required to cancel the new matter in the reply to this Office Action.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 31 and 32 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 31 and 32 refer to a predominant thickness. There is no support in the original disclosure for a predominant thickness. **This is a new matter rejection.**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5-7, 9-12, 14-15 and 25-26 are rejected under 35 U.S.C. 102 (e) as being anticipated by Schafer (6467646).

Schafer discloses a coherent product including a wall section, the wall section is shown to be a bottom or base wall in Fig. 4, the wall sections comprises two components, a first plastic

component with horizontal wall having surface 2, the horizontal wall forms a web and vertical ribs 5, the second plastic component (cover plate 20 forming a web with ribs or detents 23). The ribs 5 are wider in their vertical extending width than the thickness of the web (horizontal wall having surface 2).

Re the thickness of the ribs, Schafer could be applied such that the first and second components are switched, the first component (cover plate 20) has ribs that are thicker at the protrusion that forms the detent than the web of the first component.

Re claims 5 and 25, Schafer may be turned on its side to form an open front container with the bottom 3 extending vertically rather than horizontally so that the former bottom 3 is positioned as a side wall.

Re claim 7, the ribs (detents 23) of the second component (cover plate 20) are wider (because the width of the ribs (detents 23) extends in either of two directions as shown in Fig. 4, if the length of the ribs (detent 23) is vertical then the width extends horizontally and into the page as shown in Fig, 4, or if the length of the ribs (detents 23) is horizontal then the width extends vertically. Either way width of the ribs (detents 23) is greater than the web thickness of the second component.

Re injection molding, the Abstract at line 3 recites the "injection molding" process. However, injection molding is a product-by-process limitation within a product claim and is only given weight insofar as it structurally differentiates the product. Injection molding doesn't differentiate the product.

Re claims 14 and 27, (see Fig. 4) one rib (rib 5 of first component with opening 25) of said at least one pair of spaced apart ribs of said one wall component (first component) contacts

the web of the other said wall component (cover plate 20, second component), and the other rib (rib 5 of first component with opening 26) of said at least one pair of spaced apart ribs of said one wall component (first component) doesn't contacts the web of the other said wall component. There is a notch defined in the space between the pair of spaced apart ribs, the notch is adjacent to rib 5 of first component with opening 25, the rib (detent 23) of the other wall component is disposed in the notch.

Re claim 15, rib (detent 23) of the other wall component does not fully occupy the notch.

Claims 1, 5-7, 9, 12, 15 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Burling (4456142).

Burling discloses a coherent product including a wall section, the wall section is shown to be a side wall, the wall sections comprises two components as shown in Fig. 1-6 and has a double wall construction, Figure 3 shows a horizontal cross section looking downwardly at the corner joint, it shows a double wall structure, ribs 16 and 17 are used to space an inner wall (first plastic wall component - inner wall 12) and an outer wall (second plastic wall component - outer wall 13) a uniform distance and to secure the walls to each other. The cross section of the inner and outer walls and ribs is shown in Fig. 3, the ribs 17 which extend outwardly from the inner wall (first wall component) 12 are wider (their width extends outwardly from the outer surface of the inner wall 12) and thicker (as the enlarged protrusions 32 provide a maximum thickness) than the thickness of the web (the web is a portion of inner wall 12 extending between two ribs). Figure 2 discloses a better view of the rib 17 on the inner wall 12 in the exploded double wall section shown on the right side of Fig. 2. The rib 17 extends longitudinally in a vertical direction, the width of rib 17 extends outwardly and the thickness varies from a thick portion

near its connection with the inner wall and progressively becomes thinner at points spaced further from the inner wall until it reaches a maximum thickness at enlarged protrusion 32 at the distal edge of the rib. The thickness of the enlarged protrusion portion of the rib is clearly greater than the web thickness.

Re claims 6 and 26, the cubic shape of the container allows the container to be placed in an orientation wherein the container rests upon a sidewall such that the former sidewall is considered a base wall including the wall section with the double wall construction as referred to previously.

Re claim 7, the ribs 16 which extend inwardly from the outer wall (second wall component) 13 are wider (their width extends inwardly from the inner surface of the outer wall 13) than the thickness of the web (the web is a portion of outer wall 13 extending between two ribs).

Claims 1, 5, 7, 9, 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Edwards (3443715).

Edwards discloses a coherent product including a wall section (sidewall) as shown in Fig. 5, the wall section comprises: a first plastic component (outer cup member 14a) that includes two or more ribs (inwardly projecting flutes 34a) and a web (the rib 36a between two adjacent flutes 34a) therebetween; and a second plastic component (inner cup member 12a), the ribs of the first component are thicker (as the thickness is measured in a circumferential direction) than the thickness (as this thickness is measured in a radial direction) of the web of the first component.

Re claim 7, the second component has ribs 40a with a web 38a therebetween, the ribs of the first and second components contact each other.

Re claims 31 and 32, the thickness of the ribs and the web may change as a result of the cup's taper or narrowing as one proceeds from top to bottom (see Fig. 1 and 3). However, the rib narrowing would be proportional to the web narrowing. A predominant rib thickness would be greater than the constant web thickness.

Applicant's arguments with respect to claims 1, 5-7, 9-12, 14-15, 25-26 and 31-32 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Stephen J. Castellano/ whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3781

sjc